SUPREME COURT, U.S.
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No. 00- 00 714

IN THE

Supreme Court of the United States

SL SERVICE, INC. (formerly Sea-Land Service, Inc.) and CARRIERS CONTAINER COUNCIL, INC.,

Petitioners,

v.

OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO; LOCAL 1351, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO; and SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Fifth Circuit relying on *res judicata* principles never before applied to labor arbitration decisions ruled in conflict with the decision of the Second Circuit in the same labor dispute that prior confirmation of a bipartite labor arbitration award by a district court within the Second Circuit — involving only some of the necessary parties and only one of the relevant labor contracts — blocked a district court within its circuit from ordering a later tripartite arbitration award involving all of the parties and relevant agreements. This determination which impairs the important national policy favoring tripartite labor arbitration as a method of resolving work jurisdiction disputes peacefully presents the following question for review:

> Does a judgment confirming a bilateral labor arbitration award bestowing work jurisdiction on one group of workers preclude a later court from directing the union and employer in the first arbitration to proceed with a tripartite arbitration with another union claiming the same work for a different group of workers under a different collective bargaining agreement with the same employer?

STATEMENT PURSUANT TO RULE 29.6

In accordance with Sup Ct. Rule 29.6, petitioners state that Petitioner Carriers Container Council, Inc. is a nonprofit multiemployer organization and does not have a corporate parent. Petitioner SL Service, Inc. (formerly Sea-Land Service, Inc.) is a wholly owned subsidiary of CSX Corporation, a company publicly traded on the New York Stock Exchange. CSX Lines LLC, a member of the Carriers Container Council, is a wholly-owned subsidiary of SL Service, Inc.

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INTRODUCTION

The court of appeals in this case set aside a tripartite arbitration award that had settled a work jurisdiction dispute between two rival unions. The court of appeals held that a prior order by a district court from another circuit confirming a bilateral arbitration award in favor of one of the contending unions precluded the district court in this case from ordering the union and employer in the first arbitration to proceed with a tripartite arbitration with the other contending union. This decision is premised upon *res judicata* principles that authoritative decisions of other United States Courts of Appeals have held are inapplicable to judgments confirming arbitration awards. The decision of the court of appeals in this case frustrates the effective application of the national labor policy favoring tripartite arbitrations and upsets the congressional scheme for the proper allocation between private arbitration and the National Labor Relations Board in work jurisdiction disputes. Review by this Court is warranted.

OPINIONS BELOW

The opinion of the court of appeals, which is reported at 214 F.3d 566 (5th Cir. 2000), is reproduced in the appendix to this petition (App. A at 1a). The opinion of the United States District Court for the Southern District of Texas, which is reported at 991 F. Supp. 825 (S.D. Tex. 1998), is also included in the appendix (App. B at 18a).

STATEMENT OF JURISDICTION

The judgment of the court of appeals (App. A at 16a) was entered on June 9, 2000. On August 7, 2000, the court of appeals entered an order denying rehearing (App. C

at 31a). This petition is filed within 90 days of the date of the denial of rehearing. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254(1) (West 1993).

STATEMENT OF THE CASE

The underlying dispute in this case involves the competing work jurisdiction claims of Respondent Office and Professional Employees International Union, AFL-CIO ("OPEIU") and Respondent Local 1351, International Longshoremen's Association, AFL-CIO ("ILA") under two separate and distinct collective bargaining agreements with Petitioner SL Service, Inc., formerly Sea-Land Service, Inc.[1] The dispute concerns the assignment of employees to work at the gate to Sea-Land's marine terminal facility in the Port of Houston, Texas, receiving and delivering cargo transported by Sea-Land ships in its ocean transport business.[2]

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1. The collective bargaining agreement invoked by the ILA is a multiemployer, multiport Master Contract prescribing the terms and conditions of employment for longshore workers from Maine to Texas. This Master Contract is negotiated by the ILA International together with its affiliated districts, including Respondent South Atlantic and Gulf District International Longshoremen's Association, AFL-CIO, with a management coalition led by Petitioner Carriers Container Council, Inc. ("CCC"), a bargaining association representing the principal shipping companies in international trade calling at United States Atlantic and Gulf ports. Petitioner SL Service, Inc. continues as a member of CCC through its subsidiary, CSX Lines LLC.

2. Although Sea-Land Service, Inc. changed its name to SL Service, Inc. on June 9, 2000, it was known by its former name during the events underlying this litigation. Accordingly, Petitioner SL Service, Inc. will be referred to in this petition by its former name, Sea-Land.

OPEIU initiated the first arbitration when Sea-Land installed a new computer system at the entrance gate to its Houston facility. This system obviated the manual record-keeping functions to be performed by both ILA and OPEIU employees. This new computer system permitted ILA workers at the gate to enter the information directly into the system when cargo entered or left the facility. OPEIU grieved the loss of work under the grievance procedures of its labor contract with Sea-Land, which culminated in a bilateral arbitration without the participation of the ILA. The OPEIU arbitrator, Herbert L. Marx, Jr., issued an award, assigning the computer-entry work to OPEIU and ILA workers on a 50-50 basis. On June 28, 1996, OPEIU obtained a judgment from United States District Judge Robert P. Patterson, Jr., of the Southern District of New York, confirming and enforcing the Marx Award, again without the benefit of the ILA's participation. *OPEIU v. Sea-Land Serv., Inc.*, No. 96 Civ. 3043 (RPP) (S.D.N.Y. 1996).[3]

Sea-Land's assignment of work to OPEIU workers in accordance with the Marx Award precipitated grievances from the ILA, which triggered the grievance and arbitration machinery of the longshore Master Contract. A joint labor management panel — the Local Industry Grievance Committee ("LIGC") — issued an award finding that the data-entry work at the Houston gate must be assigned to ILA workers because the Master Contract requires clerical work at marine terminal gates from Maine to Texas to be performed exclusively by Master Contract unit employees.[4] The Master

3. Judge Patterson's decision is reproduced in the appendix to this petition (App. D at 33a).

4. Decisions of joint labor-management grievance panels are tantamount to arbitration awards and are to be reviewed and enforced (Cont'd)

Contract provision invoked by the LIGC was recently upheld by the Court of Appeals for the Second Circuit. *See Bermuda Container Line v. International Longshoremen's Ass'n*, 192 F.3d 250 (2d Cir. 1999).

OPEIU did not participate in the ILA arbitration proceeding. Consequently, when the ILA commenced this action in the Southern District of Texas before United States District Judge Samuel B. Kent seeking to confirm the LIGC Award,[5] Judge Kent recognized the need for all parties to the dispute to be participants in the litigation and thus joined the OPEIU as an indispensable party under Fed. R. Civ. P. 19. In light of the need to reconcile conflicting jurisdictional demands of competing unions, potentially conflicting labor contracts, and conflicting arbitration awards, Judge Kent refused to enforce the LIGC Award but invoked the tripartite arbitration doctrine to break the logjam. He ordered all parties to re-arbitrate their dispute in one tripartite arbitration proceeding in Texas before Arbitrator Reagan Burch.

All parties attended the tripartite arbitration hearing, but OPEIU adamantly refused to avail itself of the opportunity to present witnesses, offer documentary

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(Cont'd)
in the same manner as awards by private arbitrators. *General Drivers Local 89 v. Riss & Co.*, 372 U.S. 517 (1963); *International Longshoremen's Ass'n v. Hellenic Lines*, 549 F. Supp. 435, 437 (S.D.N.Y. 1982).

5. Subject matter jurisdiction in the court of first instance in this case rested on section 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185 (West 1998), since the controversy involved claimed violations of the collective bargaining agreements between the employer, Sea-Land, and the two contending labor organizations, OPEIU and ILA.

evidence, cross-examine witnesses, and submit briefs.[6] Instead, OPEIU repaired to the Southern District of New York, seeking an order enforcing that court's judgment confirming the Marx Award. Prior to Judge Patterson's disposition of OPEIU's motion for enforcement, the tripartite arbitration was concluded and enforced. Arbitrator Burch rendered his decision, awarding the work in dispute exclusively to the ILA workforce, and Judge Kent confirmed the Burch Award. Judge Kent was troubled by the extraordinary posture of the case. Indeed, he was not insensitive to the judgment that previously was entered by Judge Patterson. Judge Kent concluded that ordinarily judgments are entitled to full faith and credit but, in the context of work jurisdiction disputes necessitating tripartite arbitrations, a judgment confirming a bilateral arbitration award does not have the customary preclusive effect because the bilateral award is not a valid dispute resolution, since it was reached in the absence of an indispensable party — the other competing union. *Local 1351, Int'l Longshoremen's Ass'n v. Sea-Land Serv., Inc.*, 991 F. Supp. 825, 829 (S.D. Tex. 1998); App. B at 27a.

Judge Patterson denied OPEIU's motion for enforcement because he agreed "with the Texas Court that tripartite arbitration provided a pragmatic solution to the problem

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6. OPEIU had no excuse for this type of intransigent behavior. It could have fully participated without waiving any rights it had under the Marx Award as confirmed by Judge Patterson by preserving its procedural objection to the tripartite arbitration. Nevertheless, OPEIU persisted in its refusal to participate, despite noting its objection on the record — a litigation strategy purposefully pursued with full knowledge of the risk that the opportunity to participate afforded full due process rights that once rejected would not entitle OPEIU to a second bite of the apple.

posed by this situation." *OPEIU v. Sea-Land Serv., Inc.*, No. 96 Civ. 3043 (RPP), 1998 U.S. Dist. LEXIS 6297, at *11-12 (S.D.N.Y. May 4, 1998).[7] Judge Patterson's denial of enforcement was affirmed by the United States Court of Appeals for the Second Circuit. *OPEIU v. Sea-Land Serv., Inc.*, 210 F.3d 117 (2d Cir. 2000).[8] The Second Circuit panel ruled that Judge Patterson had the power to decline to enforce its prior judgment confirming the Marx Award and instead defer to the Texas tripartite arbitration "because a change in circumstances [made known by Judge Kent] had made clear that the dispute was a jurisdictional labor dispute, that tripartite arbitration was the proper and necessary vehicle to resolve the dispute, and, thus, that the prospective relief provided in the judgment was inequitable." *Id.* at 123; App. F at 58a (parenthetical added). The Second Circuit panel commented that "it is difficult to conceive how res judicata would apply since the two proceedings involved both different parties and different issues (the New York arbitrator, for example, gave no consideration whatsoever to the ILA CBA)." *Id.* at 125; App. F at 61a-62a (parenthetical in original).

The decision of the Second Circuit served to put the work jurisdiction dispute to rest. The Burch Award, the only resolution to be reached in a proceeding involving all three disputants with a full and complete record, including all relevant labor contracts and all the surrounding facts and circumstances, had received the *imprimatur* of all three courts previously involved in the dispute. All three extolled the

7. Judge Patterson's opinion denying OPEIU's motion for enforcement appears in the appendix to this petition (App. E at 35a).

8. The Second Circuit's decision is also reproduced in the appendix to this petition (App. F at 45a).

propriety of tripartite arbitration. All three courts, including Judge Patterson himself, saw no obstacle raised by Judge Patterson's prior judgment enforcing the Marx Award. The Court of Appeals for the Fifth Circuit, however, reached a diametrically opposite conclusion.

DECISION OF COURT OF APPEALS

While the Fifth Circuit merits panel agreed that Judge Kent normally had the authority to order OPEIU, ILA, and Sea-Land to a joint tripartite arbitration and that tripartite arbitration is the favored means of achieving fair and complete resolution of these types of work jurisdiction labor disputes, the panel reversed the Texas district court because it perceived the prior judgment of Judge Patterson as a procedural obstacle that precluded Judge Kent in this case from ordering tripartite arbitration. The court of appeals conceded that this case was one of first impression, stating that "none of the cases in which courts ordered tripartite arbitration have involved an earlier arbitration award which has already been confirmed by a district court's final judgment." *Local 1351, Int'l Longshoremen's Ass'n v. Sea-Land Serv., Inc.*, 214 F.3d 566, 572 (5th Cir. 2000); App. A at 12a. The court of appeals then concluded that Judge Kent's order directing the parties to tripartite arbitration violated the rule of collateral estoppel and *res judicata*. *Id.* at 572; App. A at 13a. The decision of the court of appeals thus invoked as a bar to tripartite arbitration a confirmation judgment that the very court issuing the judgment refused to enforce.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Fifth Circuit Court of Appeals Conflicts with the Second Circuit Decision in the Related Case and also Conflicts with Other Circuits as to the Limited Application of *Res Judicata* Principles of Arbitration Awards

A. The Second Circuit Affirmed the New York District Court's Denial of Enforcement of the Confirmed OPEIU Arbitration

The panel of the Fifth Circuit Court of Appeals that decided the merits underscored the significance and substantiality of the tension its resolution of the legal question in this case caused between the national labor policy favoring tripartite arbitration and general *res judicata* principles, when it remarked, "Although achieving fair and complete resolution of this multi-faceted dispute through tripartite proceedings was the laudable objective of the district court, the procedural posture of the parties at the time the judgment was entered militated against pursuing tripartite arbitration." *Local* 1351, 214 F.3d at 573; App. A at 15a. The panel recognized that this case was one of first impression but nonetheless decided to apply general *res judicata* principles applicable to district court judgments litigated on the merits, not confirmations of arbitration awards. *See id* at 572-73; App. A at 12a-13a.

The decision of the Court of Appeals for the Fifth Circuit holding that the Texas district court order directing the parties to tripartite arbitration violated the rule of collateral estoppel and *res judicata*, *see id.* at 572-73; App. A at 13a, is at odds with the collateral determination of the Second Circuit in this very case. When the Fifth Circuit ruled the June 1996

order of New York Judge Patterson was a final order, (entitled to *Res Judicata* effect) it was in conflict with both Judge Patterson himself and the Second Circuit which ruled that only the published May 1998 decision of Judge Patterson was the final order in the OPEIU arbitration proceedings.

B. The Fifth Circuit's Ruling Relating to the *Res Judicata* Application of a Confirmed Arbitration Award is in Conflict with Recent Rulings of the Second, Seventh and Ninth Circuit as to the limited *Res Judicata* effects

The intercircuit conflict extends even further. The underlying premise of the decision of the Fifth Circuit Court of Appeals in this case is the principle that a district court judgment confirming an arbitration award has the same *res judicata* effect as any other district court judgment. *See id.* at 572-73; App. A at 13a. This formulation is irreconcilably and directly in conflict with authoritative decisions of other United States Courts of Appeals. *See Consolidated Coal Co. v. UMW, Dist. 12*, 213 F.3d 404 (7th Cir. 2000); *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126 (9th Cir. 2000); *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132 (3d Cir. 1998); *National Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 129 (2d Cir. 1996).

These other circuits have ruled that judicial decisions confirming arbitration awards have limited *res judicata* effect. The Seventh Circuit recently commented on the "extremely limited" *res judicata* effect of a judicial decision confirming an arbitration award as follows: "All it amounts to is a determination that there is no basis for upending *that* award; the effect on subsequent awards must be left to the

arbitrators who make them." *Consolidated Coal Co. v. UMW, Dist. 12*, 213 F.3d 404, 408-09 (7th Cir. 2000) (emphasis in original).

A recent decision in the Ninth Circuit explains that the reason for this limited preclusive effect is that "there are fundamental differences between confirmed arbitration awards and judgments arising from a judicial proceeding." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1133 (9th Cir. 2000).[9] Judicial review of arbitration awards is deferential. A district court is required "to enter judgment upon a confirmed arbitration award, without reviewing either the merits of the award or the legal basis upon which it was reached." *Id.* at 1133.

In concluding that a confirmation judgment is not tantamount to a court judgment for all purposes, the Ninth Circuit distinguished several cases, one of which, *Miller Brewing Co. v. Fort Worth Distrib. Co.*, 781 F.2d 494 (5th Cir. 1986), is the principal authority relied on by the Fifth Circuit in this case. The Ninth Circuit reasoned that *Miller Brewing* rests on the presumption that the court issuing the original decision is best equipped to determine its preclusive effect but that rationale does not come into play "when the district court merely confirmed the decision issued by another entity, the arbitrator, and was not uniquely qualified to ascertain its scope and preclusive effect." *Chiron Corp.*, 207 F.3d at 1134. Whatever *res judicata* value the

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9. The Ninth Circuit's decision in *Chiron* relies on and is in accord with the Second Circuit's decision in *National Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 129 (2d Cir. 1996), and the Third Circuit's decision in *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132 (3d Cir. 1998).

earlier confirmed arbitration award may have must be determined by the second arbitrator, not the court. *Id.* at 1132. Therefore, it is not a complete bar to any later arbitration proceeding, even if the first award had received judicial confirmation.

The fundamental soundness of this principle of *res judicata* is manifest when the underlying arbitrations involve a work jurisdiction dispute that requires tripartite resolution. The first arbitration is bilateral and hence limited in scope. It involves only two of the three disputants and only one of the two relevant labor contracts. By its very nature, it only deals with half the loaf. The issue it decides is whether the single labor contract before the arbitrator can be interpreted to include the disputed work within the jurisdiction of the employees covered by that contract. The issue in the second tripartite proceeding is far broader and more complex, since it concerns the adjustment of the rights of two sets of employees under two different labor agreements. In deciding this broader issue, the tripartite arbitrator must take into account an array of factors not considered in the bilateral proceeding such as, for example, the efficiency and economy of operations, the relative skills of the contending workers, area and industry practice, and employer preference. *See, e.g.*, *Machinists Lodge 1743 (J.A. Jones Constr. Co.)*, 135 N.L.R.B. 1402, 49 L.R.R.M. (BNA) 1684, 1686-87 (1962). When the issues in the two proceedings differ, the first arbitral determination, even if confirmed by a court of law, does not operate as a bar to the subsequent proceeding.

II. The Decision of the Fifth Circuit Conflicts with Important National Labor Policy Favoring Tripartite Labor Arbitrations as a Method of Resolving Labor Jurisdictional Disputes Peacefully

A. Following Guidance from the Supreme Court in 1966 There Has Been an Unbroken Development of the National Labor Policy Favoring Private Tripartite Arbitrations in Labor Jurisdictional Disputes in the Second, Tenth, Ninth, Sixth and D.C. Circuits

National labor policy considers tripartite arbitration to be the most effective and appropriate mechanism for the resolution of work jurisdiction disputes between competing unions. *Transportation-Communication Employees Union v. Union Pacific R.R.*, 385 U.S. 157, 161-62 (1966). Following the impetus from this Court, federal courts of appeals embarked on the following succession of decisions supporting tripartite arbitration, which has now been broken by the court of appeals in this case:

Second Circuit: **(1969 & 1999)**

Columbia Broadcasting System, Inc. v. American Recording & Broadcasting Ass'n, 414 F.2d 1326 (2d Cir. 1969);

Emery Air Freight Corp. v. Teamsters Local 295, 185 F.3d 85 (2d Cir. 1999);

Tenth Circuit: **(1983)**

Local 850, IAM v. T.I.M.E. - DC, Inc., 705 F.2d 1275 (10th Cir. 1983);

Ninth Circuit: **(1990)**

United States Postal Serv. v. American Postal Workers Union, 893 F.2d 1117 (9th Cir. 1990);

Sixth Circuit: **(1991)**

Retail Wholesale & Dep't Store Union Local 390 v. Kroger Co., 927 F.2d 275 (6th Cir. 1991);

District of Columbia Circuit: **(1992)**

United States Postal Serv. v. Nat'l Rural Letter Carriers' Ass'n, 959 F.2d 283 (D.C. Cir. 1992).

The decision of the Fifth Circuit Court of Appeals in this case imposes a hard and fast rule based on *res judicata* principles that are not germane to labor arbitrations. "A flexible, fact-based approach that affords full play to the discretion and equitable instinct of the district court" is a more refined approach that is more conducive to a proper implementation of national labor policy. *Emery Air Freight Corp. v. Teamsters Local 295*, 185 F.3d 85, 92 (2d Cir. 1999). To allow the first union that wins the race to a confirmed bilateral award to raise that judgment as a impregnable procedural obstacle, as the Fifth Circuit does in this case, frustrates and complicates the process. *See Retail, Wholesale & Dep't Store Union Local 390 v. Kroger Co.*, 927 F.2d 275, 281 (6th Cir. 1991); *Local 850, IAM v. T.I.M.E. - DC, Inc.*, 705 F.2d 1275, 1277 (10th Cir. 1983). The first

union is well aware that that first award is not dispositive of the real issue in dispute. It is not the rights of its members under their collective bargaining agreement that control. The real overarching issue is whether under all of the relevant facts and circumstances its members are entitled to an assignment of the work in dispute. As every tribunal involved in this case, including the Fifth Circuit, agreed, that issue can only be resolved fairly and completely in a tripartite setting, and even without its consent, every disputant can be ordered to litigate the matter in a tripartite arbitration.

In light of the governing law and the nature and scope of the conflict, it was unrealistic for OPEIU to have expected the confirmation of the first award to allow it to evade the tripartite arbitration. There is no escape from the inevitable, whether the order to proceed to tripartite arbitration were to be issued by Judge Patterson, Judge Kent, or some other jurist having jurisdiction over the parties and subject matter.

The opportunity to participate in a tripartite proceeding that is the only effective means to resolve the dispute hardly amounts to penalizing OPEIU. It had available to it the right to preserve any objection it might have while presenting its case to the tripartite arbitrator. Its decision to remain silent was at its own peril. To relieve OPEIU from the consequences of its litigation strategy would be at the expense of the ILA workforce, which won the dispute fair and square. To undo the tripartite award would rekindle the controversy and destabilize the work environment. The peaceful resolution of labor disputes through arbitration, the cornerstone of our national labor policy, would be subverted.

B. The Fifth Circuit Decision Impairs the Congressional Mandate for the National Labor Relations Board to Resolve Labor Jurisdictional Disputes Involving Unfair Labor Practices

Tripartite arbitration complements the work jurisdiction dispute resolution procedures administered by the National Labor Relations Board. Under the congressional scheme in the Labor Management Relations Act ("LMRA"), the NLRB is not called upon to decide work jurisdiction disputes unless one of the contending unions resorts to strike action or other threats or coercion to force the employer to capitulate to the work assignment favored by that union. *See* 29 U.S.C.A. § 158(b)(4)(D) (West 1998). 29 U.S.C.A. § 160(k) (West 1998); *see NLRB v. Radio & Tel. Broadcast Eng'rs*, 364 U.S. 573 (1961).

The congressional preference is for the voluntary adjustment of work jurisdiction disputes by the contending parties. Tripartite arbitration fulfills this congressional purpose and removes the need for the NLRB to devote resources to the adjudication of work jurisdiction disputes after the situation deteriorates into one involving a strike, threats or coercion. The decision of the court of appeals in this case impedes the availability of tripartite arbitration and thus heightens the likelihood of the contending unions' resort to force and coercion, thereby frustrating the will of Congress.

CONCLUSION

The novel and unprecedented *res judicata* principle constructed by the court of appeals in this case imposes an unduly onerous and impractical regimen upon the tripartite arbitration doctrine. The ramifications nationwide on the peaceful resolution of labor disputes through arbitration, the cornerstone of our national labor policy, strongly support the need for review by this Court. A writ of certiorari will facilitate the opportunity provided in this case for this Court to (1) review a substantial federal question of national scope and importance that it has not yet addressed, (2) reconcile the conflict between the decision of the Fifth Circuit Court of Appeals in this case and the decisions of other courts of appeals on this question, and (3) establish an appropriate and pragmatic accommodation of the overlapping policies underlying the doctrines of *res judicata* and tripartite arbitration. Unless corrected, the decision of the court of appeals will foster an unwarranted and legally invalid obstacle to tripartite arbitration. There is a need for this Court to right the course by adopting the principle that a judgment confirming a bilateral arbitration award in a work jurisdiction dispute does not preclude another court from ordering the parties to proceed with tripartite arbitration of the dispute. A writ of certiorari should issue to review the judgment entered in this case by the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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